

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH THE

COMMANDER, NAVY REGION, MID-ATLANTIC (REGIONAL ENGINEER)

SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) of the Code of Virginia between the State Water Control Board and the Commander, Navy Region, Mid Atlantic (Regional Engineer) to resolve certain violations of the State Water Control Law and regulations of the State Water Control Board.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of DEQ.
6. "Order" means this document, also known as a consent special order.
7. "Regulations" means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "Navy" means the Commander, Navy Region, Mid Atlantic (Regional Engineer).

SECTION C: Findings of Facts and Conclusions of Law

1. The Navy operates the Yorktown Naval Weapons Station located in York County, Virginia. The Yorktown Naval Weapons Station is adjacent to the York River, a tributary to the Chesapeake Bay. Portions of the Yorktown Naval Weapons Station are in the drainage to the James River, another tributary to the Chesapeake Bay. The Yorktown Naval Weapons Station has a sewage collection system consisting of gravity sewer lines, pump stations and force mains that collect sewage from the base and transport it to the collection system owned by the Hampton Roads Sanitation District.
2. Section 62.1-44.5 of the Code and 9 VAC 25-31-50 of the Regulations prohibit discharges to State waters of sewage except in accordance with a Virginia Pollutant Discharge Elimination System permit. The Navy does not possess such a permit for the Yorktown Naval Weapons Station.
3. Sometime before May 6, 2002, a sewer line at the Yorktown Naval Weapons Station became blocked and approximately 30,000 gallons of raw sewage overflowed from a manhole and drained into a down gradient storm drain fifteen feet away. The storm drain carried the sewage into Skiffes Creek, which flows into the Skiffes Creek reservoir, a drinking water reservoir serving the City of Newport News. The overflow was reported on a Monday morning but was believed to have occurred over the weekend. The amount of overflow that reached State waters is uncertain, as are its effects.
4. This unpermitted discharge of sewage was cited in Notice of Violation No. 02-07-TRO-003 which was issued to the Navy on July 16, 2002.
5. A second overflow occurred from the same manhole on June 3, 2002 and approximately 500 gallons of sewage was released. The cause of this overflow was a line blockage. The amount of overflow that reached State waters is uncertain, as are its effects.
6. Other sewage overflows reported by the Navy are as follows: 3,000 gallons on March 5, 2002 at Spring Road; 100 gallons on April 1, 2002 at Building 456; an unknown volume on May 16 at Building 710; 500 gallons on June 3, 2002 at Building 1958; an unknown volume on June 27, 2002 at Building 1896; one gallon September 4, 2002 at lift station 2042; 1,200 gallons on September 5, 2002 at pump station 1750; 3 gallons on September 18, 2002 at pump station 1750; 8,000 gallons on November 19, 2002 at Building 1784; and, 1,000 gallons on December 3, 2002 at Building 1784. The circumstances surrounding these overflows vary; only some of them reached State waters. The amount of overflow that reached State waters is uncertain, as are the effects, if any.
7. The Navy has installed a high water alarm in the manhole adjacent to Pump Station 1958 and has pre-positioned two emergency response trailers equipped with portable pumps and hoses.
8. The Board, by virtue of its authority under section 62.1-44.15 (8a) of the Code, is empowered to order the owner of a facility, with its consent, to cease and desist from unpermitted discharge of sewage to State waters, and to comply with the State Water Control Law and regulations of the State Water Control Board. The Navy, to the extent permitted by Federal law, acknowledges the regulatory jurisdiction and enforcement

authority of the Board and Director.

9. With respect to sewage overflows listed in paragraphs 3 through 6 above, the Navy, for purposes of this Order and subsequent proceedings pertaining to this Order, admits that it is responsible in fact for these overflows, and consequently, for discharges to State waters, that it discharged sewage without a permit contrary to sections 62.1-44.5 of the Code and 9 VAC 25-31-50 of the Regulations.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Code § 62.1-44.15(8a), orders the Navy, and the Navy agrees, to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Navy, for good cause shown by the Navy, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to the Navy by DEQ cited above. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Navy admits the jurisdictional allegations, factual findings, and conclusions of law contained in Section C above.
4. With respect to the findings and conclusions set forth in Section C of this Order, the Navy acknowledges that it received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and it waives the right to an administrative hearing or judicial determination pertaining thereto. Nothing in this paragraph, however, shall be construed to waive the Navy's substantive or procedural rights in the event the Board takes administrative or seeks judicial action to enforce the Order.
5. Failure by the Navy to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The Navy shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, national emergency declared by the President, or other similar occurrence beyond the Navy's control. The Navy shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Navy shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify the Regional Office within a reasonable time (presumptively 24 hours) of the existence of a condition causing it to be impossible for the Navy to comply with Section D of this Order, will preclude the Navy from asserting such impossibility in proceedings by the Board to enforce this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and the Navy. Notwithstanding the foregoing, the Navy agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Navy. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Navy from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable. At the Navy's request, the Board or Director will also terminate this Order upon completion of the undertakings listed in Appendix A.

11. By its signature below, the Navy voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003

Robert G. Burnley, Director
Department of Environmental Quality

Accepted on behalf of Commander, Navy Region, Mid Atlantic by:

James W. Hollrith
Captain, CEC, U.S. Navy
Regional Engineer

Date: _____

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this _ day of

_____, 2003, by Captain James W. Hollrith, CEC, U.S. Navy, Regional Engineer, Navy
Region, Mid-Atlantic.

Notary Public

My commission expires: _____.

APPENDIX A

COMMANDER, NAVY REGION, MID-ATLANTIC (REGIONAL ENGINEER)

The Navy shall:

1. Mail all submittals and reports required by this Appendix A to:
Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
2. Notify DEQ at 757 518-2077 of any sewage spills into or upon State waters or that may be reasonably expected to enter State waters. Such notification shall be provided by telephone, as quickly as possible upon discovery, however, in no case later than 24 hours after discovery. A written notification shall be submitted to DEQ within five working days of said spills. The written notification shall include the following information: date, time and estimated duration of the spill; estimate of the volume of sewage spilled, cause of the spill; response and disposal activities to clean up the spill; and corrective actions undertaken.
3. By March 1, 2003 install a cured in place lining in the sewer line adjacent to pump station 1958.
4. By March 1, 2003, submit to the Regional Office for review and approval a maintenance plan for grease traps serving the lines listed in item 6. Before implementing the plan, the Navy will consider comments received within 30 days. If the Navy does not implement a recommended change to its plan, the Navy will advise the Regional Office in writing of the reason(s) therefor.
5. By March 1, 2003, submit to the Regional Office for review and approval a line-cleaning plan for the lines listed in item 6. Before implementing the plan, the Navy will consider comments received within 30 days. If the Navy does not implement a recommended change to its plan, the Navy will advise the Regional Office in writing of the reason(s) therefor.
6. By March 1, 2003, submit to DEQ a map and list of all gravity sewer lines that have experienced overflow problems.
7. By March 1, 2004, inspect the lines listed in item 6 by closed circuit television and submit a report of results to the Regional Office. Include in the report a plan and schedule for correcting any identified problems. The Navy acknowledges that DEQ, as a result of the findings of this inspection, may seek a subsequent order to require corrective actions for problems found, or to

amend this Order. Nothing in this Order shall be construed to constitute prior consent thereto.

Note: In accordance with the Federal Anti-Deficiency Act, the obligations of the Navy under this section are expressly conditioned on the availability of Congressional appropriations, which the Navy agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the Navy will promptly inform the Regional Office. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with the Navy's consent.